

1 **WAGANAKISING ODAWAK STATUTE**
2 **PERSONAL PROTECTION ORDERS and NO CONTACT ORDERS and**
3 **VIOLATIONS and VIOLATIONS of PROTECTIVE ORDERS**
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6 **SECTION I. PURPOSE**
7

8 The goal of this Statute is to provide for Personal Protection Orders.
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11 **SECTION II. DEFINITIONS**
12

13 **A.** “Course of conduct” means a pattern of conduct composed of a series of two (2)
14 or more separate non-continuous acts or an ongoing continuous act.
15

16 **B.** “Emotional distress” means significant mental suffering or distress that may, but
17 does not necessarily, require medical or other professional treatment or counseling.
18

19 **C.** “Harassment” means conduct directed toward a victim that includes, but is not
20 limited to, repeated or continuing un-consented contact that would cause a reasonable
21 individual to suffer emotional distress and that actually causes the victim to suffer
22 emotional distress.
23

24 **D.** “Minor” or “Juvenile” means an individual who has not attained the age of 18
25 years.
26

27 **E.** “Non-Domestic Protection Order” or “NDPO” means an order issued by Tribal
28 Court or a Court of Competent Jurisdiction for the purpose of stalking. Such orders are
29 not intended for disputes between neighbors.
30

31 **F.** “Stalking” means a willful course of conduct involving repeated or continuing
32 harassment of another individual that would cause a reasonable person to feel terrorized,
33 frightened, intimidated, threatened, harassed, or molested and that actually causes the
34 victim to feel terrorized, frightened, intimidated, threatened, harassed, or molested.

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by Councilor Wemigwase posted 12/30/14

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2 **G.** “Territorial Jurisdiction of the Little Traverse Bay Bands of Odawa Indians”
3 means “areas referenced in Public Law 103-324, 25 USC Section 1300k-2(b)(2)(A) as
4 the boundaries *of the reservations for the Little Traverse Bay Bands as set out in Article*
5 *I, paragraphs ‘third and fourth’ of the Treaty of 1855, 11 Stat.621.*” Little Traverse Bay
6 Bands Constitution, Article V (A) (1) (a).

7
8 **H.** “Tribal Court” means the Little Traverse Bay Bands of Odawa Indians Tribal
9 Court.

10
11 **I.** “Tribal Member” means a person who is enrolled Citizen a federally recognized
12 Tribe.

13
14 **J.** “Tribe” means the Little Traverse Bay Bands of Odawa Indians.

15
16 **K.** “Unconsented contact” means any contact with another individual that is initiated
17 or continued without that individual's consent or in disregard of that individual's
18 expressed desire that the contact be avoided or discontinued. Unconsented contact
19 includes, but is not limited to, any of the following:

- 20
21 1. Following or appearing within the sight of that individual.
22
23 2. Approaching or confronting that individual in a public place or on private
24 property.
25
26 3. Appearing at that individual's workplace or residence.
27
28 4. Entering onto or remaining on property owned, leased, or occupied by that
29 individual.
30
31 5. Contacting that individual by telephone.
32
33 6. Sending mail or electronic communications to that individual.
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2 7. Placing an object on, delivering an object, or causing an object to be
3 delivered to the victim's place of work or property owned, leased, or occupied by
4 that individual.
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7 **SECTION II. CIVIL JURISDICTON**
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9 **Civil Jurisdiction.** The Tribal Court has full jurisdiction and authority to issue and
10 enforce protection orders against all persons who are Indians; who live or work in the
11 territorial jurisdiction of LTBB; or who are a spouse, intimate partner or dating partner of
12 an Indian.
13

14 **SECTION III. PROTECTION ORDERS**
15

16 **A. Types of Personal Protection Orders.** There are two types of Personal
17 Protection Orders (PPO), non-domestic and domestic. A PPO shall clearly
18 indicate whether it is a domestic or non-domestic PPO.
19

20 **B. Issuance of PPO.** PPOs may be granted either ex parte or after a hearing. If a
21 hearing is requested the Tribal Court shall provide at least seven (days) notice of
22 the hearing to the petitioner and the respondent. Notice of the hearing shall be
23 personally served upon the parties. If personal service cannot be accomplished,
24 then the court shall accomplish service in a manner consistent with the Tribal
25 Court Rules of Civil Procedure.
26

27 **C. Criteria for issuance of PPO.** The Tribal Court upon finding that the respondent
28 has engaged in one or more of the following acts listed below, shall issue a PPO:
29

30 1. Stalking the petitioner;
31

32 2. Making threats of physical violence directed at the petitioner and/or the
33 petitioner's minor child(ren), whether or not the threat was part of a pattern of
34 conduct;

- 1 **3.** Making threats to destroy, damage, or cause harm to the petitioner's
- 2 property, whether or not the threat was part of a pattern of conduct;
- 3
- 4 **4.** Inflicting emotional distress on the petitioner as part of a pattern of
- 5 conduct to control and/or isolate the petitioner;
- 6
- 7 **5.** Where the respondent was convicted under tribal, federal or state law, of
- 8 perpetrating one or more of the following crimes against the petitioner:
- 9 **a.** criminal sexual conduct;
- 10 **b.** assault;
- 11 **c.** battery;
- 12 **d.** domestic violence;
- 13 **e.** kidnapping;
- 14 **f.** rape;
- 15 **g.** trafficking;
- 16 **h.** torture;
- 17 **i.** any crime involving the use, or threatened use, of a weapon;
- 18 **j.** any crime involving the use, or threatened use, of force and/or
- 19 violence;
- 20 **k.** Making threats to take, remove, abduct, kidnap, or conceal the
- 21 petitioner's minor child(ren).
- 22

23 **D. Required findings to enter PPO ex parte.** Prior to entering a PPO ex parte the
24 Tribal Court must make a finding based on testimony and/or other relevant evidence from
25 the petitioner that:

- 26
- 27 **1.** Petitioner requested an ex parte PPO; and
- 28
- 29 **2.** Respondent committed one or more of the acts listed in subsection (C);
- 30 and
- 31
- 32 **3.** The delay caused by failing to grant the PPO ex parte would result in
- 33 irreparable injury, loss, or damage to the petitioner or notice itself would
- 34 precipitate adverse action before the PPO could be issued.
- 35

1 **E. Evidence for ex parte PPO; Consideration by Tribal Court.** The Tribal Court
2 may consider the following when determining whether to grant or deny an ex parte PPO:
3

- 4 1. Medical reports of injuries;
- 5
- 6 2. Police reports;
- 7
- 8 3. Pictures of injuries;
- 9
- 10 4. Evidence of damage to household or personal items;
- 11
- 12 5. Copies of relevant criminal convictions of the respondent;
- 13
- 14 6. A personal diary or calendar documenting abuse;
- 15
- 16 7. Affidavits from witnesses.
- 17

18 **F. Provisions applicable to ex parte PPOs.** An ex parte PPO is effective when it is
19 signed by the judge and is immediately enforceable whether or not the respondent
20 has received notice of the PPO. It shall be noted in bold or capital letters on the *ex*
21 *parte* order “Advising the Respondent that”:
22

- 23 1. "You have the right to request a hearing to contest the ex parte PPO or any
24 condition of the PPO, within 14 days”.
- 25
- 26 2. “The *ex parte* order shall remain in effect until it expires or is dismissed
27 by the Court.”
- 28
- 29 3. "If you fail to request a hearing regarding the PPO, then you lose any right
30 to contest the ex parte PPO”.
- 31
- 32 4. “When the hearing is set, and you fail to appear, the ex parte PPO will stay
33 in effect.”
- 34

35 **G. Conditions of PPO.** After determination that a PPO should be issued the Tribal

1 Court may impose the following conditions as part of a PPO:
2

- 3 **1.** Prohibit the respondent from threatening to physically injure or kill
4 petitioner and/or the petitioner's minor child(ren)
5
- 6 **2.** Prohibit the respondent from threatening to commit, or committing, acts of
7 harassment against the petitioner or other family or household member;
8
- 9 **3.** Prohibit the respondent from harassing, annoying, telephoning, contacting,
10 or otherwise communicating with the petitioner, either directly or indirectly
11 through a third-party including minor children, except as otherwise required or
12 permitted by prior court order;
13
- 14 **4.** Prohibit the respondent from appearing at, or entering the home of the
15 petitioner and/or the petitioner's minor child(ren);
16
- 17 **5.** Prohibit the respondent from appearing at any location where the
18 petitioner is likely to be, including:
19
 - 20 **a.** the petitioner's school;
 - 21 **b.** the school where the petitioner's minor child(ren) attend;
 - 22 **c.** the petitioner's place of employment;
 - 23 **d.** a specified place frequented regularly by the petitioner.
24
- 25 **6.** Prohibit the respondent from approaching, confronting, or following the
26 petitioner in a public place or on private property;
27
- 28 **7.** Prohibit the respondent from placing an object on, or delivering an object
29 to, property owned, rented, leased, or occupied by the petitioner;
30
- 31 **8.** Prohibit the respondent from interfering with the petitioner at her/his place
32 of employment or education or engaging in conduct that impairs her/his
33 employment or educational relationship or environment;
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- 35 **9.** Prohibit the respondent from purchasing or possessing a firearm;

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10. Prohibit the respondent from having access to information in records concerning a minor child of petitioner and respondent that will reveal petitioner’s address, telephone number, or employment address or other contact information or that will reveal the child’s address, telephone number, or other contact information;

11. Prohibit the respondent from interfering or destroying property owned by the petitioner.

H. Additional conditions for domestic PPOs. The Tribal Court may impose the following additional conditions in domestic PPO orders:

- 1.** Prohibit the respondent from entering the joint residence;
- 2.** Prohibit the respondent from removing property from the joint residence, unless otherwise ordered by the Court;
- 3.** Prohibit the respondent from destroying joint property;
- 4.** Prohibit the respondent from denying petitioner access to minor child(ren) of the respondent and petitioner;

I. Required Notifications. PPOs issued by the Tribal Court shall contain the following notices:

- 1.** Inform the respondent that a violation of these conditions may result in her/his immediate arrest for noncompliance.
- 2.** Inform the respondent that as a result of this order, federal, tribal and/or state law may prohibit her/him from possessing or purchasing ammunition or a firearm.
- 3.** Inform the respondent that he/she may file a motion to modify or terminate this order. This particular notice must inform the respondent that if the

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1 order was entered ex parte the motion must be filed within 14 days after being
2 served with or receiving actual notice of the order. This particular notice must
3 inform the respondent that forms and instructions are available from the court
4 clerk.
5

6 **4.** State clearly the effective date of the order and when the order expires.
7

8 **5.** State clearly the potential penalties for violation of the order.
9

10 **6.** State clearly that the PPO is effective until the expiration date or until
11 further order of the Tribal Court.
12

13 **J. Transmission of PPO to law enforcement agencies, explanation of PPO to**
14 **parties; notification.** Following the issuance of a PPO the Tribal Court shall do the
15 following:
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17 **1.** Cause the order to be delivered to Tribal Law Enforcement or other
18 appropriate person(s) and/or agency for service and entry into the Law
19 Enforcement Information System (LEIN) system;
20

21 **2.** Make reasonable efforts to ensure that the PPO is understood by the
22 Petitioner, and if present, the Respondent; and
23

24 **3.** Transmit, by the end of the next business day after the order is issued, a
25 copy of the PPO to the local law enforcement agency or other agencies designated
26 by the Petitioner.
27

28 **4.** Notify the petitioner upon receipt of the proof of service of the PPO.
29

30 **SECTION IV. HEARINGS**

31

32 **A. Notice.** Any request for a hearing, either requesting a PPO or contesting a PPO,
33 the Tribal Court shall hold a hearing with 10 business days. The Tribal Court shall
34 provide at least seven (7) days of any hearing held pursuant to this Statute. Notice shall

1 be provided in accordance with the Tribal Court Rules of Civil Procedure unless
2 otherwise provided for in this Statute.

3
4 **B. Presentation of witnesses, evidence; right to cross examine.** The petitioner and
5 respondent will each have the opportunity to present testimony and evidence, including
6 witness testimony. The petitioner or respondent may have the court issue and serve
7 subpoenas for witnesses to attend the hearing.
8

9 **C. Attendance of parties not required.** The Tribal Court may proceed with the
10 hearing in the absence of either party.
11

12 **D.** After the Hearing the Court may order the terms of the ex parte order, modify or
13 amend the order. Additionally, the Court may order civil assistance, or a mutually agreed
14 upon third party involvement so that either the Petitioner or Respondent may be able to
15 access personal property or property of the minor children as appropriate. The order shall
16 include reasonable dates, times, and locations for transfer of possessions.
17

18 **SECTION V. ARREST FOR VIOLATIONS OF ORDERS**

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20 **A.** When a law enforcement officer has probable cause to believe that a respondent
21 has violated a court Protection Orders or No Contact Order, the officer may, without a
22 warrant, arrest the apparent violator whether or not the violation was committed in the
23 presence of the officer.
24

25 **B.** The petitioner who is granted a Protection Orders or No Contact Order cannot
26 violate or be arrested for violation of her/his own Protection Orders.
27
28

29 **SECTION VI. IMMUNITY**

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31 **A.** Any law enforcement officer shall have immunity from any liability, civil or
32 criminal, in making arrests or exercising any other authority granted under this Statute, if
33 the law enforcement officer acts within the scope of his/her authority.
34

35 **B.** Law enforcement officers shall have the same immunity with respect to
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1 participation in any court proceedings resulting from arrests made for any crimes
2 involving a PPO.

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4 **SECTION VII. CONFIDENTIALITY OF PETITIONER'S ADDRESS**

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6 **A.** The address of a victim is confidential. Law enforcement, criminal justice
7 personnel, probation and advocates shall not reveal the victim's address

8
9 **B.** A petitioner may omit her or his address from all documents filed with the Court.
10 If a petitioner omits her or his address, the Petitioner must provide the Court a mailing
11 address or, in the event the Petitioner is utilizing advocacy services, the name of an
12 advocate that has the knowledge to be able to contact the Petitioner. If disclosure of
13 Petitioner's address is necessary to determine jurisdiction the Court may order the
14 disclosure to be made:

15
16 1. After receiving the Petitioner's consent;

17
18 2. Orally and in chambers, out of the presence of the respondent and a sealed
19 record be made; or

20
21
22 3. After a hearing, if the Court takes into consideration the safety of the
23 Petitioner and finds such disclosure is in the interest of justice.

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26 **SECTION VIII. PETITIONER CANNOT VIOLATE THEIR OWN**
27 **PROTECTION ORDER.**

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29 Petitioner cannot be considered by any invitation as having violated, or be subject to
30 arrest for a violation of their own Protection Order.

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33 **SECTION IX. MUTUAL PROTECTION ORDERS PROHIBITED.**

1 The Court shall not grant mutual Protection Orders.

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4 **SECTION X. TRIBAL REGISTRY FOR PROTECTION ORDERS:**

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6 **A.** To ensure the proper and timely enforcement of all LTBB Tribal Protection
7 Orders, and any foreign orders falling within its purview and jurisdiction, the LTBB
8 Tribal Court shall provide for a registry that shall be a record of all Protection Orders
9 issued by or registered with the LTBB Tribal Court. The Court Clerk shall provide the
10 law enforcement dispatch centers with certified copies of Protection Orders within the
11 same day of issuance.

12
13 **B.** The Court shall coordinate with, and ensure that any LTBB Tribal Protection
14 Orders are submitted to any other registries, whether federal, state, Tribal, or local, for
15 the purpose of enhancing full faith and credit enforcement of all Protection Orders,
16 including provisions to enter the Protection Orders in the National Crime Information
17 Center (NCIC) database.

18
19 **C.** The Court Clerk shall also immediately provide the dispatch centers and
20 designated registry with certified copies and information concerning any modifications,
21 revocations, withdrawals, and/or expired, Protection Orders.

22
23 **D.** The Court shall provide that information contained in the registry shall be
24 available on a 24-hour basis to any court, law enforcement agency, or domestic violence
25 program.

26
27
28 **SECTION XI. VIOLATION OF PPO; SANCTIONS**

29
30 Violations of a PPO are a crime. An individual found guilty of violating a PPO may be
31 sentenced to jail for up to 60 days and/or a \$500.00 fine for each violation.

32
33 **SECTION XII. SEVERABILITY CLAUSE**

1 If any clause, section or part of this Statute is found to be unconstitutional, such a finding
2 shall not render invalid the remainder thereof, but shall be confined in its operation to the
3 offending section.

4
5
6 **SECTION XIII. EFFECTIVE DATE**

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8 Effective upon the signature of the Executive, or 30 days from submission to the
9 Executive branch, or if the Executive vetoes the legislation, then upon Tribal Council
10 override of the veto.

11
12 **CERTIFICATION**
13